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Hearing Date: May 23, 2012
Hearing Time: 10:00 A.M. EST
Objections Due: January 17, 2012

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
And Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**NOTICE OF MOTION FOR AN ORDER AFFIRMING TRUSTEE'S
DETERMINATIONS DENYING CLAIMS OVER ERISA-RELATED OBJECTIONS**

PLEASE TAKE NOTICE that Irving H. Picard, trustee (“Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the estate of Bernard L. Madoff (“Madoff”) (collectively, “Debtor”), by and through his undersigned counsel, will move before the Honorable Burton R. Lifland, United States Bankruptcy Judge, at the United States Bankruptcy Court, the Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004, on **May 23, 2012 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, seeking entry of an order affirming the denial of customer claims filed by claimants who argue that the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, *et seq.*, and related regulations confer on them “customer” status, as that term is defined by section 78lll(2) of the Securities Investor Protection Corporation Act (“SIPA”), 15 U.S.C. § 78aaa, *et seq.*;¹ and

PLEASE TAKE FURTHER NOTICE that a scheduling order was entered by this Court on November 8, 2011 (the “ERISA Scheduling Order”) relating to this ERISA Claimants Without An Account Motion (the “ERISA CWAA Motion”), and is attached hereto as Exhibit A. As set forth in the ERISA Scheduling Order, BLMIS claimants that filed timely objections and argue that ERISA and related regulations determine their “customer” status under SIPA (“ERISA Claimants Without An Account”) are permitted to file opposition briefs (“Opposition Briefs”) and supporting documentation (“ERISA Documentation”) in accordance with the ERISA Scheduling Order. Failure to file timely Opposition Briefs and ERISA Documentation will bar ERISA Claimants Without An Account from being heard on this issue, unless the Trustee agrees or the Court orders otherwise, and the Court’s Order on the ERISA CWAA Motion will be binding on them; and

¹ For convenience, future reference to SIPA will not include “15 U.S.C.”

PLEASE TAKE FURTHER NOTICE that, if others want to be heard on the ERISA issue as it relates to “customer” status under SIPA, the briefing schedule and hearing date set forth in the ERISA Scheduling Order is not limited to ERISA Claimants Without An Account. Other claimants or parties-in-interest who seek to be heard on the ERISA issue as it relates to “customer” status concerning their claims and corresponding objections shall Opposition Briefs consistent with the ERISA Scheduling Order. Failure to file timely Opposition Briefs and ERISA Documentation will bar claimants and parties-in-interest from being heard on this issue, unless the Trustee agrees or the Court orders otherwise, and the Court’s Order on the ERISA CWAA Motion will be binding on them; and

PLEASE TAKE FURTHER NOTICE that, in accordance with the ERISA Scheduling Order attached hereto as Exhibit A, Opposition Briefs must conform to applicable rules of this Court and be filed with the Clerk of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004, in accordance with General Order 242 by no later than **January 17, 2012** (“Objection Deadline”) (with a courtesy copy delivered to the Chambers of the Honorable Burton R. Lifland) and must be served upon (a) Baker & Hostetler LLP, counsel for the Trustee, 45 Rockefeller Plaza, New York, New York 10111, Attn: David J. Sheehan; and (b) Securities Investor Protection Corporation, 805 15th Street, N.W., Suite 800, Washington, D.C. 20005, Attn: Kevin H. Bell, so as to be received no later than the Objection Deadline; and

PLEASE TAKE FURTHER NOTICE that on or before **April 2, 2012**, any party that filed an Opposition Brief may file a reply brief in accordance with the ERISA Scheduling Order attached hereto as Exhibit A; and

PLEASE TAKE FURTHER NOTICE that the Court shall hold a hearing on this Motion on **May 23, 2012, at 10:00 a.m.**, or such other time as the Court determines. As stated in the

ERISA Scheduling Order, the Court will only consider the Trustee's construction of the term "customer" as it relates to ERISA. Any bases other than ERISA-related arguments as they relate to "customer" status for disallowing the claims of ERISA Claimants Without An Account or objecting to the Trustee's claims determinations will be resolved at a later date.

Dated: New York, New York
November 14, 2011

Of Counsel:

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